



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09.06.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS. 7726 & 8074 OF 2022

AND

W.M.P. NOS. 7742, 7745, 8039 & 8040 OF 2020

S.Senthilkumar

.. Petitioner in WP 7726/2022

S.Sivakumar Sundaram

.. Petitioner in WP 8074/2022

- Vs -

1 Commissioner of Land Administration
Chepauk, Chennai 600 005.

2 The District Collector
Kancheepuram District
Kancheepuram.

3 Special District Revenue Officer
(Land Acquisition)
Chennai Peripheral Road Project-III
SIDCO Branch Office
Ambattur Industrial Estate
Chennai 600 058.

.. Respondents in both petitions

W.P. No.7726 of 2022 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records relating to the impugned proceedings published under Section 15 (1) of the Tamil Nadu Highways Act in Government Gazette dated 13.08.2021 Ref. No.359 issued by the 1st respondent and the consequential notice dated 12.1.2022 issued under Section 19 (5) of the Act issued by the 3rd respondent and quash the same insofar as the petitioner's land and building comprised in Survey Nos.107/1A measuring 63 cents and S. No.107/1B measuring 15 cents in all measuring 78 cents situated in No.111, Sengadu Village, Sriperumbudur Taluk, Kancheepuram District and consequently direct the



respondents to consider the written objections dated 9.3.2020 and 3.2.2022 submitted by the petitioner by granting personal hearing and further opportunity to file objections before the 1st respondent in accordance with the provisions of the Tamil Nadu Highways Act & Rules.

Prayer in WP.8074 of 2022:

Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings under Section 15(3) of the Tamil Nadu Highways Act dated 12.08.2021 issued by the 1st respondent and the consequential Notification under Section 15(1) of the Tamil Nadu Highways Act issued by the 1st respondent on 13.08.2021 in the Government Gazette and the further notice dated 12.01.2022 issued under Section 19(5) of the Act issued by the 3rd respondent and quash the same and consequently direct the respondents to consider afresh the objections of the petitioner by affording personal hearing as per the provisions of Tamil Nadu Highways Act and Rules.

For Petitioners : Mr.S.Thankasivan (Both Cases)

For Respondents : Mr.P.Sathish. AGP

COMMON ORDER

The present petitions have been filed questioning the acquisition process initiated by the 3rd respondent to acquire the lands of the petitioners for the purpose of widening of the Chennai Peripheral Ring Road Project under the aegis of the Highways Department for road connectivity from Ennore Port to Mahabalipuram.

2. It is the case of the petitioners that they are the owners of the lands and have been in possession and enjoyment of the same and that the revenue records also stand in their name. It is the further averment of the petitioners that the lands have been utilized by them for eking out their livelihood, either by running an industrial unit or by renting out the same for the purpose of industrial unit and some small shops.

3. It is the further aces of the petitioners that during March, 2020, notice dated 18.2.2020u/s 15 (2) of the Tamil Nadu Highways Act (for short 'the Act') was issued informing that an extent of about 1565 sq. mtrs., is sought to be acquired for the purpose of formation of the expanded highway which included part



of the lands of the petitioners. It is further averred by the petitioners that they were issued with the notice u/s 19 (5) of the Act and were called upon to attend the enquiry for the purpose of fixing the compensation.

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4. It is the further case of the petitioner in W.P. No.7726/2022 that upon submission of representation and after much persuasion the petitioner was provided with a copy of the Government Gazette dated 13.8.21 issued u/s 15 (1) of the Act. Pursuant to the receipt of the notice, the petitioners appeared in person along with written representation by submitting alternative proposal for re-routing the road without hindering the lands of the petitioners. However, no response having been received by the petitioners till date, the present petitions have been filed for the relief as above.

5. Learned counsel appearing for the petitioners submitted that the lands of the petitioners are on the western side of the road, which is sought to be acquired. However, on the eastern side of the road, huge vacant Government poramboke lands are available which could be utilized for the purpose of implementing the road widening project. It is the further submission of the learned counsel that industries and buildings are more on the western side and widening of the road by acquiring the lands on the western side would be more viable financially to the Government. It is the further submission of the learned counsel that if the lands on the eastern side are utilized for the road widening project, the lands being Government poramboke lands, the financial burden on the exchequer would be greatly reduced and public money would not be wasted. It is the further submission of the learned counsel that utilization of the Government lands on the eastern side without disturbing the peaceful possession of the petitioners and other similarly situated persons, would also not affect the livelihood of the petitioners.

6. It is the further submission of the learned counsel for the petitioners that only on account of influence being exerted by vested interests, the lands of the petitioners are sought to be acquired for the project though there are vast extent of lands available on the eastern side to be utilized for the purpose of widening of the road.

7. It is the further submission of the learned counsel that the above facts, including alternative proposal for the road widening project and realignment of the road was placed before the 3rd respondent at the time of enquiry by way of written representation, but the same has not been properly considered and the order passed by the respondent is silent on the representation and the alternative proposal submitted by the



petitioners. It is the submission of the learned counsel that the enquiry u/s 15 (3) ought to have taken into consideration all the materials including the representation and the alternative proposal given by the petitioners and the above act of the respondents would only cause irreparable loss to the petitioners and would very much affect his livelihood. Therefore, it is prayed that the acquisition proceedings requires to be quashed and the matter remanded to the authority for fresh consideration on the basis of the representation submitted by the petitioners.

8. Per contra, learned Addl. Government Pleader appearing for the respondents submit that the Government had taken a policy decision to widen the road for the purpose of easy movement of vehicular traffic and also for the purpose of reducing the inconvenience caused to the commuters on the National Highway. The whole project has been carefully studied in detail by the experts and, thereafter, acquisition of the lands have been approved and, therefore, this Court may not interfere with the opinion of the experts with regard to the alignment in which the road should be widened, as it has been the consistent view of the Courts that opinion of experts should not be deliberated by the Courts unless it is shown that the said opinion of the experts suffers from perversity. In the case on hand, the petitioners merely allege that the more vacant Government lands are available on the eastern side, which could be utilized for the purpose of road widening. However, the experts have opined that the lands on the western side would be more conducive and have proper alignment for the widening of the road and that being the case, this Court shall not sit over the opinion of the expert by substituting its views.

9. It is the further submission of the learned Addl. Government Pleader that cost to the exchequer would not be a consideration, in the light of the opinion of the expert and the feasibility and the viability of the project in a particular alignment. The better alignment in the view of the expert would be the basis on the utilization/acquisition of the lands and cost cannot be a factor to be taken into account over the opinion of the experts.

10. It is the further submission of the learned Addl. Government Pleader that the allegation of influence of vested interest in the acquisition is nothing but an allegation without any material, which cannot form the basis for any interference by this Court.

11. It is the further submission of the learned Addl. Government Pleader that the representation of the petitioners have been taken into consideration in the light of the opinion



of the experts and after careful consideration, the representation were rejected. It is further submitted that it is not the case of the petitioners that the enquiry contemplated u/s 15 (3) has not been conducted, but the grievance is only to the extent that their representations have not been properly considered, which is nothing but an extended attempt on the part of the petitioners to gain the sympathy of this Court. It is the submission of the learned counsel that all the materials, including the representation of the petitioners were considered in proper perspective.

12. It is the further submission of the learned Addl. Government Pleader that public interest will outweigh private interest and the mere fact that the acquisition of a portion of the lands of the petitioners would affect the livelihood of the petitioners is too farfetched as it is not the case of the petitioners that the entire lands in their possession is sought to be acquired. Only a portion is sought to be acquired, which will not in any way affect the livelihood of the petitioners. Therefore, it is submitted that no interference is warranted with the acquisition proceedings.

13. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

14. It is to be pointed out that it is not the case of the petitioners that no expert study has been undertaken before deciding the alignment of the roads and the expansion of roads. It is also not the case of the petitioners that the financial implication involved in the acquisition process has not been taken into consideration. It is only the contention of the petitioners that a different alignment by utilizing the lands on the eastern side would save their lands from acquisition, but also help in utilization of Government lands, would save the cost of acquisition. It is evident from the counter of the respondents that a detailed expert study has been undertaken before finalizing the alignment and laying of the road. All the factors, including the lands, which belong to the petitioners as also the lands, which are on the eastern side have been taken into consideration before finalizing the alignment of the roads.

15. It has been the consistent view of the Courts that when experts have opined about the viability of the project, this Court cannot substitute its views to that of the Technical Experts unless the opinion arrived at by the expert body is perverse and is blatantly wrong, which warrants interference at the hands of this Court.



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16. In Union of India - Vs - Kushala Shetty & Ors. (2011 (12) SCC 69) the Hon'ble Supreme Court has held that the courts are not at all equipped to decide on the viability and feasibility of a particular project when an opinion has been formed by the experts and in this regard, the Hon'ble Supreme Court held as under:-

"28. Here, it will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of National Highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of National Highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The Courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The Court can nullify the acquisition of land and, in rarest of rare cases, the particular project, if it is found to be ex-facie contrary to the mandate of law or tainted due to mala fides. In the case in hand, neither any violation of mandate of the 1956 Act has been established nor the charge of malice in fact has been proved. Therefore, the order under challenge cannot be sustained."

17. In the case on hand, as already pointed out above, it is not the case of the petitioners that no opinion has been obtained from any expert body before proceeding further on the project. The petitioners base their claim on the availability of land on the eastern side, which can be used for road widening, but even the said stand is disputed by the respondents in their counter submitting that it is not as if the lands are vacant in its entirety, but there are buildings as well and, therefore, considering all the aspects surrounding the land, the expert body has opined the best alignment and, therefore, the



alternative alignment submitted by the petitioners is not feasible.

18. In the above backdrop, it is to be stressed that neither the courts nor the individuals, viz., the writ petitioners are body competent to decide as to which lands would be more conducive for the road widening project. When the expert body has conducted detailed analysis and submitted that there would be no impediment for expansion of the road project in the alignment proposed, the representation of the petitioners suggesting alternative proposal for the project cannot form the basis for redetermination of the feasibility of the project. Further, it is to be pointed out that the widening is not merely at one segment, but already certain phases of road in the other parts of the project has been widened and it is only based on the said alignment, alignment of the roads at the point of the petitioners land could be determined and, as stated above, the competent body is the experts in the said field, who can find out the best alignment, which has been done and approved. Therefore, this Court cannot sit in appeal over the said expert opinion.

19. Once this Court has come to the conclusion that the alignment approved by the expert body and accepted by the Government for widening the road, the question of financial implication due to acquiring of lands of the petitioners would pale into insignificance. True it is that public money is involved and it should not be wasted, but equally it is to be seen as to the feasibility and viability of the proposal before deciding on the financial implication involved. Once the best feasible proposal has been accepted, this Court has to definitely bear in mind that the financial aspects would definitely have been taken into consideration by the Government with regard to the acquisition of the lands and the viability of the project would have weighed in the mind of the Government in approving the project. Such being the case, the expert body having opined a particular proposal and a policy decision has been taken by the Government to implement the project, merely because certain private interests would get involved and suffer detriment would not be a ground to interfere in the project.

20. Further, it has been the consistent view of the Courts that personal interest cannot override the larger public interest. When it comes to matters of larger public interest, the personal interest should be relegated to the back seat, else the economic and developmental activity of the country will be greatly hampered.

21. Insofar as the contention with regard to the proposal to acquire the lands of the petitioners, which is on the western



side than the lands on the eastern side is concerned, though it is the stand of the petitioners that the influence of vested interests have a bearing in the approval of the alignment by the expert body, yet no material whatsoever is placed before this Court to show that the influence of vested interests have a bearing in the outcome of the alignment, and that perversity hits at the root of the case. Mere allegation will not partake the character of proof and when a specific allegation is made, it is the bounden duty of the petitioners to place materials to substantiate the said allegation. In the absence of any credible material to substantiate the said allegation, this Court is of the considered view that the said allegation cannot be a ground for this Court to interfere in the acquisition process.

22. Further, as evidenced by the materials in the counter, while the petitioner in W.P. No.7726/22 did not take part in the enquiry, the representative of the petitioner in W.P. No.8074/22 took part in the enquiry process and submitted his side of the representation, which has been considered before deciding to acquire the lands of the petitioners. Such being the case, the decision being a policy decision of the State for the purpose of improving the infrastructure and cater to the growing traffic explosion and to improve better seamless connectivity in and around the city and also for socio-economic development, this Court, in exercise of its jurisdiction under Article 226 of the Constitution cannot interfere in such policy decisions, moreso, when it has not been shown to be illegal, arbitrary or perverse. Therefore, the prayer sought for in the present petitions cannot be granted.

23. In view of the aforesaid findings, when the Court expressed its intention to dismiss the petitions, learned counsel appearing for the petitioners submit that this Court may direct the respondents to fix the compensation after proper ascertainment of the guideline value with regard to similar type of lands in proximate vicinity and after affording opportunity of personal hearings fix the compensation by strictly following the provisions of Sections 26 to 30 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2018. Further the value of the machineries, buildings, etc., shall also be determined as contemplated u/s 29 (1) of the Act in addition to payment of solatium and that the compensation shall be paid prior to taking possession of the lands and premises of the petitioners. For the aforesaid submissions, learned Addl. Government Pleader has no serious objections.

24. For the reasons aforesaid, the writ petitions are dismissed. However, the respondents are directed to conduct



proper enquiry for fixing the compensation under Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2018 and pass orders in accordance with law, after affording reasonable opportunity of hearing to the petitioners, within a period of twelve weeks from the date of receipt of a copy of this order. The respondents are further directed to give sufficient time to the petitioner to shift the machineries erected in the premises and for relocating the machineries to other places before taking possession of the land and buildings so acquired. Consequently, W.M.P. Nos. 7742 & 8039 of 2022 to dispense with the production of original order copy are ordered as prayed for and W.M. P. Nos. W.M.P. Nos.7745 and 8040 of 2020 are dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

GLN

To

- 1 The Commissioner of Land Administration
Chepauk, Chennai 600 005.
- 2 The District Collector
Kancheepuram District
Kancheepuram.
- 3 The Special District Revenue Officer
(Land Acquisition)
Chennai Peripheral Road Project-III
SIDCO Branch Office
Ambattur Industrial Estate
Chennai 600 058.

+2ccs to Mr.S.Thankasivan , Advocate, S.R.No.33850, 33851
+1cc to the Government Pleader, S.R.No.34210

W.P. NOS. 7726 & 8074 OF 2022

SSI (CO)
PM/24/06/2022